

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MICHAEL D. FAGANS, #2211624,	§	
	§	
Petitioner,	§	
	§	
v.	§	Case No. 6:19-cv-279-JDK-JDL
	§	
DIRECTOR, TDCJ-CID,	§	
	§	
Respondent.	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Michael D. Fagans, an inmate confined at the Eastham Unit of the Texas Department of Criminal Justice, proceeding pro se, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for disposition.

On January 25, 2021, Judge Love issued a Report and Recommendation recommending that the Court deny the petition and dismiss the case with prejudice. Judge Love also recommended that a certificate of appealability be denied. Docket No. 35. Petitioner timely objected. Docket No. 37.


Where a party objects within fourteen days of service of the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en*

banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

In his objections, Petitioner appears to argue that his guilty plea was involuntary because trial counsel withdrew from representing him, which “forced” Petitioner to enter a guilty plea. Docket No. 37 at 7–16. However, Petitioner raises this claim for the first time in his objections. Therefore, this claim is not properly before the District Court. *See Place v. Thomas*, 61 F. App’x 120, 2003 WL 342287 *1 (5th Cir. 2003) (unpublished) (“Generally, an issue raised for the first time in an objection to a magistrate judge’s report is not properly before the district court and therefore is not cognizable on appeal.”).

Having conducted a de novo review of the Report and the record in this case, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner’s objections are without merit. The Court therefore **OVERRULES** Petitioner’s objections (Docket No. 37) and **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 35) as the opinion of the District Court. Petitioner’s petition for habeas corpus is hereby **DENIED** and this action is **DISMISSED** with prejudice. Further, the Court **DENIES** a certificate of appealability.

So **ORDERED** and **SIGNED** this **2nd** day of **March, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE